
(1997) 07 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 22902 of 1997

Kunwar Akhilesh Pratap Singh	Vs	APPELLANT
District Magistrate, Maharajganj and others		RESPONDENT

Date of Decision : 30-07-1997

Acts Referred:

Arms Act, 1959 — Section 17, 17(3), 21, 21(1), 4

Citation : (1998) 1 AWC 567

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : H.N. Singh, for the Appellant;

Final Decision : Disposed Of

Judgement

D.K. Seth, J.—Sri H. N. Singh, learned counsel for the petitioner assails the order dated 21.5.1997 by which the petitioner was directed to deposit his arms in the police station, Nautanwa. district Maharajganj on the ground that the petitioner's licence was neither suspended nor cancelled, on the other hand the same has been renewed till the year 2000. He points out from the order dated 16.5.96 by which the petitioner was directed to show cause as to why his licence should not be cancelled and if it is not submitted within time, suitable order will be passed, that the said order does not contain any reason. Pursuant to the said order the petitioner has submitted two applications by which the petitioner had asked for certain papers which was not supplied to him and by reason thereof he was unable to submit his reply earlier.

2. Be that as it may, even if no reply is submitted, in that event, it was open to the respondents to pass appropriate order for suspension or revocation as it might deem fit. But unless an order of suspension or revocation is passed. It is not within the jurisdiction of the Licencing Authority to direct deposit of the arms in the police station pending enquiry. Then again the order impugned discloses no reasons due to which the petitioner was so directed to deposit the arms. The only ground which was sought to be made out in the order that the petitioner did

not submit his reply. The non-submission of reply does not empower the licencing authority to direct deposit of the arms without suspending and revoking the licence.

3. The provisions for suspension and revocation as contained in Section 17 provides in sub-section (3) the grounds on which an order of suspension can be issued. The said sub-section 3 provides as follows :

"(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence :

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence ; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened ; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver up the licence."

4. In the present case, there is no finding that the authority was satisfied that the holder of the licence was prohibited by the Arms Act or any other law from acquiring the said licence or to retain the same in his possession. None of the ingredients mentioned in clause (a) neither any of those of clauses (b), (c). (d) and (e) has been mentioned to have been satisfied. It is not a case that the petitioner was asked to deliver the licence and he had failed to do so as provided in clause (e). If any of these grounds is present, in that event, the order of suspension has to be issued- Without an order of suspension, there is no scope on the part of the licensing authority to direct deposit of the same.

5. On the other hand, the other provisions contained u/s 21, which requires deposit of arms provides as follows :

"21. (1) Any person having in his possession any arms or ammunition the possession whereof has in consequence of the expiration of the duration of a licence, or of the suspension or revocation of a licence or by the Issue of a notification u/s 4 or by any reason whatever, ceased to be lawful shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or subject to such conditions as may be prescribed with a licensed dealer or where such person is a member of the armed forces of the Union, in a unit armoury.

Explanation.--in this sub-section "unit armoury" includes an armoury in a ship or establishment of the Indian Navy."

6. The said provisions as contained in sub-section (I) provides that a person is to deposit his arms on the expiration of the duration of the licence or due to suspension or revocation thereof or by reason of notification u/s 4 due to which the person ceased to be in lawful possession of the arms.

7. In the present case, none of those conditions provided in Section 21 referred to above appears to have been satisfied or atleast it is so reflected in the impugned orders. Therefore, in the facts and circumstances of the case, it appears that the order does not disclose any ground for direction to deposit the arms.

8. The learned standing counsel, Sri R. C. Yadav contends that he has not been able to obtain the instruction in the matter. According to him, it might be that there is some order, which has not been disclosed in the writ petition. The said contention is vehemently opposed by Sri H. N. Singh.

9. Sitting in writ jurisdiction, it is not possible to decide such a question which is disputed by the parties. In that view of the matter, the writ petition is disposed of in the following manner. The licensing authority shall not insist upon deposit of the arms of the petitioner in terms of order dated 21.5.1997, in case no order of suspension or revocation of the licence has been passed on or before 21.5.1997 in terms of Section 17 or 21 of the said Act. However, it will be open to the licensing authority to pass appropriate order in accordance with law, if he so thinks fit. In case there are any other orders passed on 21.5.1997 or earlier suspending or revoking the licence. In that event, the petitioner shall deposit the arms within a week from this date if communicated or from the date the said order is communicated to him by the licensing authority, whichever is earlier, to the police station or to a licenced dealer as he may be advised. If no such order is passed against the petitioner, he will not be liable to deposit the arms in terms of the order dated 21.5.1997 until any further order is issued by the licensing authority in accordance with law.

10. With these observations, the writ petition is finally disposed of. The petitioner shall communicate this order to the licensing authority within a week from today.